

REMARKS

Claims 1 - 10 and 12 - 20 are pending in the application.

Claim 12 is amended to depend from claim 1 rather than previously cancelled claim 11. This does not raise a new issue. Claim 11 had been canceled by Applicant's Amendment of Nov. 6, 2008 when its features were added to claim 1. Thus, amending claim 12 to depend from claim 1 merely arrives at the same combination of claims 1, 11 and 12 as previously presented.

I. Allowable Subject Matter and 35 USC §103(a)

Claims 1, 3, 4, 6-10, 15, 16 and 20 are rejected under 35 USC 103(a) as being unpatentable over GB 885,503. It is respectfully submitted this rejection is moot and overcome.

A. Claims 1, 3, 4, 6-10, 15 and 16

The final Office action indicates claims 1, 3, 4, 6-10, 15, 16 and 20 are rejected under 35 USC §103(a) as being unpatentable in view of GB '503 as applied in the non-final Office action mailed 3 September 2008.

Applicant does not understand why claims 1, 3, 4, 6-10, 15 and 16 are rejected. It is respectfully submitted the final Office action overlooked that Applicant already combined claim 1 with one of the allowable claims.

The non-final Office action of September 3, 2008 had indicated claims 2, 5, 11, 12, 17 and 18 were objected to as being dependent upon a rejected base claim, but were deemed to be allowable if rewritten in independent form including all of the limitations of the base claim 1 and any intervening claim. The present final Office action also indicates this.

Allowable claim 11 recited "wherein the method refines aluminum". Applicant's Amendment of Nov. 6, 2008 amended claim 1 to include this feature of allowable claim 11 and cancelled claim 11. Claims 2-10 and 12-18 depend from claim 1. Since base claim 1 includes the feature of allowable claim 11, Applicant submits the rejection of Claims 1, 3, 4, 6-10, 15 and 16 under 35 USC §103(a) is overcome and claims 1-10 and 12-18 are allowable.

If the final Office action is raising a new ground of rejection against claims 1, 3, 4, 6-10, 15 and 16 then Applicant requests the finality of the rejection be withdrawn

because the final rejection did not indicate the new grounds of rejection and the new grounds, if any, was not necessitated by Applicant's amendment.

B. Claim 20

Claim 20 is rejected under 35 USC §103. The final Office action states "the amended feature of the temperature difference that is present over the length of the layer of metal, wherein the higher temperature being present at an end of the metal layer to which the crystals are transported is obvious over GB '503."

It is respectfully submitted this conflicts with the indication, in the non-Final Office action mailed 3 September 2008 and in the present final rejection, that claim 2 is allowable. Claim 2 had recited "wherein a temperature difference is present over the length of the layer of metal, the higher temperature being present at an end of the metal layer to which the crystals are transported." The Amendment of Nov. 6, 2008 added claim 20 to be claim 2 rewritten in independent form. In other words. claim 2 was, and still is, indicated to be allowable and claim 20 is merely allowable claim 2 in independent form. Thus, claim 20 is allowable and the rejection of claim 20 under 35 USC 103(a) is overcome.

The final Office action asserts "Since the behavior of the crystals in GB '503 is the same as that claimed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to expect that the temperature gradient would also be the same." This assertion is respectfully traversed.

Claim 20 recites a method for fractional crystallisation of an at most partially solidified molten metal. GB '503 does not mention processing metal. GB '503 page 1, lines 8-16 states, "The present invention relates to apparatus which provides for the contacting of two components of different densities which may be two immiscible or partly immiscible liquids or of a liquid with a particulate solid as occurs in a wide variety of industrial processes, such as, for example, leaching or extraction, washing or chemical reaction processes." GB '503 page 4, lines 93-98, discusses operation from a plant unit for the liquid systems of water-carbon tetrachloride and water-paraffin.

Thus, Applicant asserts there is no disclosure of a method for fractional crystallisation of an at most partially solidified molten metal. Applicant requests the

Examiner indicate where GB '503 discloses or suggests metal crystals behaving the same as that presently claimed.

If the final Office action is raising a new ground of rejection against claim 20 it is submitted the finality of the rejection should be withdrawn because claim 20 is merely Claim 2 in independent form. Thus, the new ground of rejection was not due to an amendment made by applicant.

C. Claim 19

Applicant thanks the Examiner for indicating Claim 19 is allowed.

II. Information Disclosure Statement

Applicant takes this opportunity to request the Examiner consider the references in the IDS submitted 22 January 2009 (after the mailing of the final Office action).

III. Conclusion

In view of the above, it is respectfully submitted all the pending claims are allowable. Thus, a Notice of Allowance is respectfully requested.

If the Examiner has any further issues regarding this application, she is encouraged to contact the undersigned by telephone to quickly resolve them in view of some of the unusual aspects of the rejections.

Respectfully submitted,

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